



# Water Quality NewsFlash

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**San Diego Stormwater Permit – Appellate court supports the Boards** – In 2001, the San Diego Regional Board issued a municipal stormwater permit to the county, the port, and 18 local cities. The Building Industry Association of San Diego County appealed the permit to the State Board. The State Board upheld the permit. The BIA and others then went to Superior Court alleging that the permit violated state and federal law because the permit provisions were too stringent and impossible to satisfy. The Court decided in favor of the Boards and three environmental organizations that joined the case in support of the permit. BIA appealed and contended, among other issues, that the permit violated federal law because it allowed the Boards to impose control measures more stringent than "maximum extent practicable" pollutant removal. The MEP performance standard for municipalities is specified in the Clean Water Act. The State Appeals Court determined that the Boards do have the authority to go beyond MEP and include permit provisions requiring compliance with state water quality standards. This decision may impact other permit challenges in the state. The decision is similar to that of the federal appeals court in *Defenders of Wildlife vs. Browner* (NewsFax 99-29) which determined that compliance with WQS was a discretionary decision by the permitting agency.

The Appeals Court stated that "there is no showing on the record before us that the applicable water quality standards are unattainable." They also noted that "the fact that many of the Municipalities' storm sewer discharges currently violate water quality standards does not mean that the Municipalities cannot comply with the standards during the five-year term of the Permit." The Court suggested that the "impossibility" arguments were premature in the absence of enforcement actions or citizens suits for non-compliance with water quality standards. Decision posted: <http://www.courtinfo.ca.gov/opinions/documents/D042385.PDF>

**North Coast Basin Plan – Amendment allows compliance schedules within permits** – In some cases, it is infeasible to immediately comply with the limitations in an NPDES permits. This may be the case, for example, if treatment facilities need to be constructed in order to meet new, or newly interpreted water quality standards. In such situations, it is reasonable to include in the permit a time schedule for achieving compliance with the limitations. The North Coast Regional Board amended its Basin Plan to allow this option and the State Board approved the change at its Nov. 18 meeting. Similar changes have been made by other Boards.

Permit compliance schedules usually include *interim* effluent limits and other requirements. In general, NPDES compliance schedules cannot exceed ten years after the establishment of new objectives or prohibitions. In some cases, however, compliance with TMDL requirements incorporated into a permit may extend beyond ten years from the date of permit issuance. In the absence of compliance schedules in permits, Boards are required to use enforcement orders to ensure compliance with requirements that cannot be met at the time of permit adoption. An enforcement action (including its associated schedule) means the discharge is in noncompliance and the SB 709 "mandatory minimum" penalties may be triggered, even if the schedule is being followed. On the other hand, a permit and its associated schedule do not constitute non-compliance (assuming, of course, that the schedule is being followed).

<http://www.swrcb.ca.gov/agendas/2004/november/1118-10.doc>

WQ NewsFlash is a weekly update of storm water and related news for the Department. *Verify information before taking action on these bulletins.* Contact Betty Sanchez, [Betty\\_Sanchez@dot.ca.gov](mailto:Betty_Sanchez@dot.ca.gov) (916) 653-2115, or Fred Krieger, (510) 843-7889, [fkrieger@msn.com](mailto:fkrieger@msn.com) with questions or to be added or deleted from e-mail list. Posted online at: <http://www.dot.ca.gov/hq/env/stormwater/publicat/newsflash/index.htm>